

WC-03-214

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September 17, 2003

VIA COURIER

FCC/MELLON

SEP 17 2003

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
P.O. Box 358145
Pittsburgh, PA 15251-5145

Re: Application of DSLnet Communications, LLC and VantagePoint Venture Partners
For Section 214 Authority - Domestic

Dear Ms. Dortch:

On behalf of DSLnet Communications, LLC ("DSLnet") and VantagePoint Venture Partners ("VPVP," together with DSLnet, the "Applicants"), please find an original and six (6) copies of an application for Commission approval for VPVP to relinquish majority control of DSLnet. Applicants are seeking similar authority with respect to DSLnet's international Section 214 authority and, accordingly, this Application is being separately and concurrently filed with the Commission's International Bureau.

Enclosed, please find a check in the amount of \$860.00 to cover the Commission's filing fee. Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,



Richard M. Rindler
Edward S. Quill, Jr.

Counsel for DSLnet Communications, LLC

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
)

DSLnet COMMUNICATIONS, LLC)
)

and)

VANTAGEPOINT VENTURE PARTNERS)
)

Application Pursuant to Section 214 of the)
Communications Act of 1934 and)
Sections 63.04 and 63.18 of the Commission's)
Rules for Authorization to Relinquish)
Indirect Majority Control)
_____)

File No. ITC-T/C-2003 _____

WC Docket No. 03- _____

JOINT APPLICATION

I. INTRODUCTION

A. Summary of Transaction

DSLnet Communications, LLC ("DSLnet") and VantagePoint Venture Partners ("VPVP")¹ (together, "Applicants"), by their undersigned counsel and pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (the "Act"), and Sections 63.04 and 63.18 of the Commission's Rules, 47 C.F.R. §§ 63.04, 63.18, hereby request authority to the extent necessary for VPVP to relinquish indirect majority control of DSLnet as a result of a series of transactions through which Deutsche Bank AG London ("Deutsche Bank") may obtain a substantial indirect minority interest in DSLnet. As described below, because the proposed transactions will be completed at the holding company level and will not change the rates, terms or

¹ VPVP is comprised of four affiliated private investment funds: VantagePoint Venture Partners III (Q), L.P., VantagePoint Venture Partners III, L.P., VantagePoint Communications Partners, L.P. and VantagePoint Venture Partners 1996, L.P.

conditions of DSLnet's services, the proposed transactions will be entirely transparent with respect to DSLnet's services.

B. Request for Expedited Consideration

The Transactions proposed herein are necessary to ensure that critical financing arrangements for DSLnet can be concluded in a timely fashion. In particular, the transactions described below are expected to provide DSLnet and its corporate family with greater access to needed capital and allow DSLnet to compete more effectively. Accordingly, the proposed transactions serve the public interest and Applicants respectfully request that the Commission approve this Application as expeditiously as possible in order to allow Applicants to consummate the proposed transactions as soon as possible.

C. Application Eligible for Streamlined Processing

Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Sections 63.03 and 63.12 of the Commission's Rules, 47 C.F.R. §§ 63.03 & 63.12. With respect to domestic authority, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because, immediately following the transactions, (1) DSLnet and its affiliates combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) DSLnet will provide local exchange service, if at all, only in areas served by dominant local exchange carriers (none of which are parties to the proposed transactions) and; (3) none of the Applicants or their affiliates are dominant with respect to any service. With respect to international authority, Section 63.12(c)(1) is inapplicable because Applicants are not and are not affiliated with any foreign carriers except for foreign carriers that qualify for a presumption of non-dominance pursuant to Section 63.10(a)(3) of the Commission's Rules, 47 C.F.R. § 63.10(a)(3) (*see* Section 63.12(c)(1)(ii)) and none of the other scenarios outlined in Section 63.12(c) of the Commission's

Rules, 47 C.F.R. § 63.12(c), apply.

In support of this Application, Applicants provide the following information:

II. THE APPLICANTS

A. DSLnet Communications, LLC ("DSLnet")

DSLnet is a limited liability company organized and existing under the laws of the State of Delaware with principal offices located in New Haven, Connecticut. DSLnet is a wholly owned subsidiary of DSL.net, Inc. ("Parent"), a publicly held Delaware Corporation also headquartered in New Haven. Parent is currently majority owned by VantagePoint Venture Partners, a family of affiliated private investor funds.

DSLnet holds Section 214 authority to provide facilities-based and resold services pursuant to authority granted by the Commission in File Nos. ITC-214-19990716-00434, ITC-T/C-20011109-00600 and ITC-ASG-20030611-00290. DSLnet also holds blanket domestic Section 214 authority to provide interstate interexchange services. In addition, DSLnet is authorized to provide facilities-based and/or resold local exchange and interexchange telecommunications services in 49 states and local exchange service in the District of Columbia pursuant to certification, registration or tariff requirements, or on a deregulated basis. DSLnet is a non-dominant carrier that, among other things, provides high-speed communications services.

B. VantagePoint Venture Partners ("VPVP")

VPVP consists of a family of affiliated private investment funds with more than \$2.5 billion under management. VPVP for purpose of this application is comprised of four affiliated funds: VantagePoint Venture Partners III (Q), L.P., VantagePoint Venture Partners III, L.P., VantagePoint Communications Partners, L.P. and VantagePoint Venture Partners 1996, L.P. None of the VPVP funds directly holds any FCC authorizations. VPVP was authorized to

acquire a controlling interest in DSLnet by virtue of authority granted by the Commission in File No ITC-T/C-20011109-00600 and CC Docket No. 01-329.

III. DESCRIPTION OF THE TRANSACTIONS

Parent is in the process of completing a series of financing transactions ("Transactions") which, if consummated, could result in relinquishment of VPVP's majority interest in DSLnet. Specifically, in connection with an investment financing of approximately \$30 million, Parent has proposed, subject to shareholder and regulatory approvals, to issue to Deutsche Bank AG London ("Deutsche Bank") certain warrants through which Deutsche Bank could acquire a significant minority position in Parent. Regardless of whether the warrants are ultimately exercised, VPVP will continue to hold a large minority interest in DSLnet. However, the proposed Transactions may result in VPVP's interest in Parent falling below 50% and in such event, the Transactions would cause VPVP to relinquish positive control of DSLnet.² A chart illustrating the proposed Transactions is provided in Exhibit A.

The proposed Transactions will not directly affect the rates, terms and conditions under which DSLnet provides service. All of the proposed Transactions are financial in nature and are being completed as part of an overall financing package of the DSLnet family of companies. Because DSLnet continues to have access to capital through its corporate Parent, the proposed Transactions are expected to allow DSLnet to become financially stronger and thereby be better positioned to operate. As a result, the Transactions will be entirely transparent to customers in terms of the services they receive.

IV. PUBLIC INTEREST STATEMENT

Applicants respectfully submit that the proposed Transactions serve the public interest. In particular, Applicants submit that (1) the Transactions will promote competition among interstate

² In order to complete the proposed series of Transactions, Parent has entered into a Purchase Agreement dated as of July 18, 2003 ("Purchase Agreement"). A copy of the Purchase Agreement will be provided upon request.

and international carriers by reinforcing the status of DSLnet as a viable competitor, and (2) the Transactions will be transparent to DSLnet customers in terms of the services that they receive.

The proposed Transactions are expected to facilitate competition in the United States by improving the financial position of DSLnet's corporate parent. In particular, the proposed Transactions are expected to provide Parent access to substantial additional capital which will allow Parent and DSLnet to ensure continuity of operation, expand the companies' operations as market conditions warrant and further refine their operations. All of these factors are expected to allow DSLnet to compete more effectively and improve its position in the interstate and international market place.

The proposed Transactions will not inconvenience or cause confusion to customers. The Transactions described herein will not affect DSLnet's current management structure or alter Applicants's operations. The Transactions will not affect the rates, terms and conditions of the services that DSLnet currently provides. Indeed, from the customer's standpoint, the proposed Transactions will be entirely transparent.

V. INFORMATION REQUIRED BY SECTION 63.18

Pursuant to Section 63.18(e)(3) of the Commission's rules, the Applicants submit the following information in support of this Application:

(a) Name, address and telephone number of each Applicant:

VantagePoint Venture Partners: VPVP's indirect interest in DSLnet is held through four affiliated funds: VantagePoint Venture Partners III (Q), L.P., VantagePoint Venture Partners III, L.P., VantagePoint Communications Partners, L.P. and VantagePoint Venture Partners 1996, L.P. The address and telephone number for all of these entities is:

1001 Bayhill Drive, Suite 300
San Bruno, California 94066
Tel: (650) 866-3100
Fax: (650) 869-6078

Licensee: DSLnet Communications, LLC
545 Long Wharf Drive, Fifth Floor
New Haven, Connecticut 06511
Tel: (203) 772-1000
Fax: (203) 624-3612

(b) Jurisdiction of Organizations:

VPVP: Each of the private investment funds that make up VPVP is organized under the law of the State of Delaware.

Licensee: DSLnet is organized under the laws of the State of Delaware.

(c) Correspondence concerning this Application should be sent to:

Richard M. Rindler
Edward S. Quill, Jr.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7645

with a copy to:

Stephen Zamansky
Senior Vice President & General Counsel
DSL.net, Inc.
545 Long Wharf Drive, Fifth Floor
New Haven, Connecticut 06511
Tel: (203) 782-7459
Fax: (203) 624-4231

- (d)** DSLnet holds global international Section 214 authorization to provide facilities-based and resold international telecommunications services between the United States and foreign points pursuant to authority granted in File No. ITC-214-19990716-00434; File No. ITC-T/C-20011109-00600; and File No. ITC-ASG-20030611-00290. DSLnet also holds blanket domestic Section 214 authority. Other than its interest in DSLnet, VPVP does not hold Section 214 authority.
- (e)** Pursuant to Section 63.18(e)(3), the Applicants seek authority for VPVP to relinquish indirect majority control of DSLnet, a nondominant common carrier holding international and domestic Section 214 authorization.
- (f)** Not applicable.

(g) Not applicable.

(h) When considered on a fully diluted basis, once the Transactions are completed, the following persons or entities would hold a ten percent (10%) or greater ownership interest in **DSLnet Communications, LLC**:

Name: **DSL.net, Inc.**
Address: 545 Long Wharf Drive, Fifth Floor
New Haven, CT 06511
Citizenship: Delaware (U.S.A.)
Percentage Ownership: 100%
Principle Business: Telecommunications

The following entities would hold at least a ten percent (10%) or greater ownership interest in **DSL.net, Inc.** following consummation of the Transactions:

Name: **VantagePoint Venture Partners III (Q), L.P.**
Address: 1001 Bayhill Drive, Suite 300
San Bruno, CA 94066
Citizenship: Delaware (U.S.A.)
Percentage Ownership: 25%
Principal Business: Venture Capital

The following entities would hold a ten percent (10%) or greater interest in **DSL.net, Inc.**:

Name: **Deutsche Bank AG London**
Address: Winchester House
1 Great Winchester Street
London, United Kingdom EC2N208
Citizenship: German
Percentage Ownership: 32%
Principal Business: Banking

The following entities would be deemed to hold at least a ten percent (10%) or greater ownership interest in **VantagePoint Venture Partners III (Q), L.P.** for the purposes of the FCC's rules following consummation of the Transactions:

Name: **VantagePoint Venture Associates III, L.L.C.**
Address: 1001 Bayhill Drive, Suite 300
San Bruno, CA 94066
Citizenship: Delaware (U.S.A.)
Percentage Ownership: General Partner
Principal Business: Investing

The following entities would be deemed to hold at least a ten percent (10%) or greater ownership interest in **VantagePoint Venture Associates III, L.L.C.** for the purposes of the FCC's rules following consummation of the Transactions:

Name: **James D. Marver**
Address: c/o VantagePoint Venture Associates III, L.L.C.
1001 Bayhill Drive, Suite 300
San Bruno, CA 94066
Citizenship: U.S.A.
Percentage Ownership: **Managing Member**
Principal Business: **Individual**

Name: **Alan E. Salzman**
Address: c/o VantagePoint Venture Associates III, L.L.C.
1001 Bayhill Drive, Suite 300
San Bruno, CA 94066
Citizenship: U.S.A.
Percentage Ownership: **Managing Member**
Principal Business: **Individual**

In addition to the interests set forth above, as set forth in footnote 1 above, various other VantagePoint Venture Partners affiliated funds hold indirect minority interests in DSLnet Communications, LLC. As a result, the total holdings of Vantage Point Venture Partners would remain at least approximately 35% (or roughly equivalent to Deutsche Bank's maximum potential interest), even though under certain scenarios, the indirect holdings of Vantage Point Venture Parters III (Q), L.P. as a single entity could fall from 25% to slightly below 20%.

If the proposed transactions are completed, on a fully diluted basis, except for VantagePoint Venture Partners III (Q), L.P., VantagePoint Venture Associates III, L.L.C., Mr. Marver and Mr. Salzman, none of the other VantagePoint Venture Partner affiliated entities would be deemed to hold more than ten percent direct or indirect ownership (10%) of DSLnet Communications, LLC.

Deutsche Bank is publicly held. Deutsche Bank is unaware that any entity holds a ten percent (10%) or greater interest in Deutsche Bank:

Other than those listed above, no other person or entity would hold a ten percent (10%) or greater direct or indirect ownership interest in DSLnet Communications, LLC if the transactions described herein are completed.

- (i) DSLnet is not a foreign carrier and is not currently affiliated with any foreign carriers. Through the proposed transactions, DB may acquire an interest of more than twenty-five percent (25%) in DSLnet. In that event, DSLnet would become affiliated, as that term is defined in Section 63.11(a)(2), with foreign carriers controlled by DB. Accordingly, through the proposed transactions, DSLnet may become affiliated with the following entities each of which is directly or indirectly

majority owned by Deutsche Bank and each of which is authorized to provide competitive telecommunication services in Germany:

- 1) TeraGate AG (via TeraGate Beteiligungs-GmbH)
- 2) RKS Telecom Südwest Regionale Kabel-Service-Beteiligungsgesellschaft mbH
- 3) Tele Columbus GmbH, Hannover (via Telecolumbus Sachsen- Thüringen GmbH)
- 4) URBANA Telekommunikation GmbH

In addition, Deutsche Bank owns a substantial minority interest in Bivideon, B.V., a Dutch holding company that owns a majority interest in Ceske radiokomunikace, a.s., a competitive carrier that operates in the Czech Republic. Although Applicants believe that Deutsche Bank's interest in Ceske radiokomunikace, a.s., would not currently be considered controlling for the purposes of the FCC's rules, Applicants disclose this interest for the sake of completeness and to ensure compliance with the Commission's rules.

All of the carriers identified in this section are new entrant competitive carriers that lack market power and which operate in their respective markets on a non-dominant basis.

- (j) In the event that the transactions described above are consummated, Deutsche Bank would own more than twenty-five percent (25%) of DSLnet. Deutsche Bank currently holds a controlling interest in the competitive German carriers listed in item (i)(1)-(4) above. DSLnet certifies that it seeks to continue to be authorized to provide service to Germany, as well as to the Czech Republic, the country in which Ceske radiokomunikace, a.s. operates.
- (k) Germany and the Czech Republic are both members of the World Trade Organization.
- (l) In satisfaction of Commission Rule 63.10(a)(3), 47 C.F.R § 63.10(a)(3), DSLnet certifies that none of the foreign carriers listed in subsection (i) above hold 50% or more of the international transport and local access markets in the international markets in which those entities operate. As a result, all of the foreign carriers that DSLnet may become affiliated with as a result of the proposed transactions are presumptively non-dominant under the Commission's rules.
- (m) Following the completion of the proposed transactions, DSLnet wishes to continue to be treated as a non-dominant carrier for the purposes of providing service to Germany and the Czech Republic, the countries (listed in subsections (i) and (j)). In support of that request, Applicants certify that none of the foreign

carriers listed in subsection (i) above hold 50% or more of the international transport and local access markets in the international markets in which those entities operate. Following the transactions described herein, DSLnet will and its proposed foreign carrier affiliates will continue to lack market power and the ability to discriminate against unaffiliated U.S. carriers through control of bottleneck services or facilities in the destination markets or otherwise to affect competition adversely in the U.S. market. Accordingly, pursuant to Commission Rule 63.10(a)(3), 47 C.F.R. § 63.10(a)(3), following the transaction, DSLnet will continue to be presumptively classified as non-dominant.

- (n) Applicants certify that they have not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.
- (o) Applicants certify pursuant to Sections 1.2001 through 1.2003 of the Commission's rules that no party to the Application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.
- (p) Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Sections 63.03 and 63.12 of the Commission's Rules, 47 C.F.R. §§ 63.03 & 63.12. In particular, Section 63.12(c)(1) is inapplicable because Applicants are not and are not affiliated with any foreign carriers except for foreign carriers that qualify for a presumption of non-dominance pursuant to Section 63.10(a)(3) of the Commission's Rules, 47 C.F.R. § 63.10(a)(3) (see Section 63.12(c)(1)(ii)) and none of the other scenarios outlined in Section 63.12(c) of the Commission's Rules, 47 C.F.R. § 63.12(c), apply.

VI. INFORMATION REQUIRED BY SECTION 63.04

In lieu of an attachment, pursuant to Commission rule 63.04(b), 47 C.F.R. § 63.04(b) Applicants submit the following information in support of their request for domestic Section 214 authority in order to address the requirements set forth in Commission rule 63.04(a)(6)-(12):

- (a)(6) A description of the Transactions is set forth in **Section III.** above.
- (a)(7) DSLnet provides broadband service to customers located in the 50 United States and the District of Columbia. VPVP does not provide telecommunications services in any state.
- (a)(8) This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because following the Transactions, DSLnet and its affiliates will hold less than a ten percent (10%) share of the interstate, interexchange market

and none of the Applicants or their affiliates are dominant with respect to any service.

(a)(9) Through this Application, Applicants seek authority with respect to both international and domestic Section 214 authorizations (this Application is being separately and concurrently filed with respect to both authorities in compliance with Commission Rule 63.04(b), 47 C.F.R. § 63.04(b)). No other applications are being filed with the Commission with respect to this transaction.

(a)(10) The proposed Transactions are needed to provide critical financing to the DSLnet family of companies including DSLnet. Accordingly, Applicants request expeditious processing of this Application to permit the proposed Transactions to be completed as rapidly as possible.

(a)(11) Not applicable.

(a)(12) A statement showing how grant of the application will serve the public interest, convenience and necessity is provided in Section IV. above.

VII. CONCLUSION

Based on the foregoing, Applicants respectfully request the Commission approve VantagePoint Venture Partners' relinquishment of indirect majority control of DSLnet Communications, LLC and the acquisition by Deutsche Bank AG of London of a substantial indirect minority interest in DSLnet Communications, LLC.

Respectfully submitted,



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Counsel to DSLnet Communications, LLC

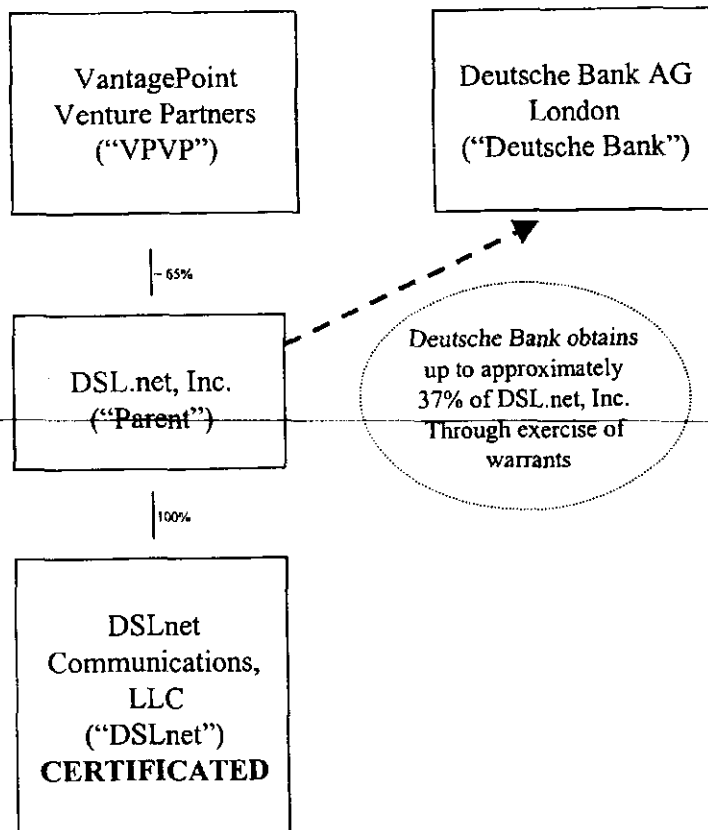
September 17, 2003

Exhibit A

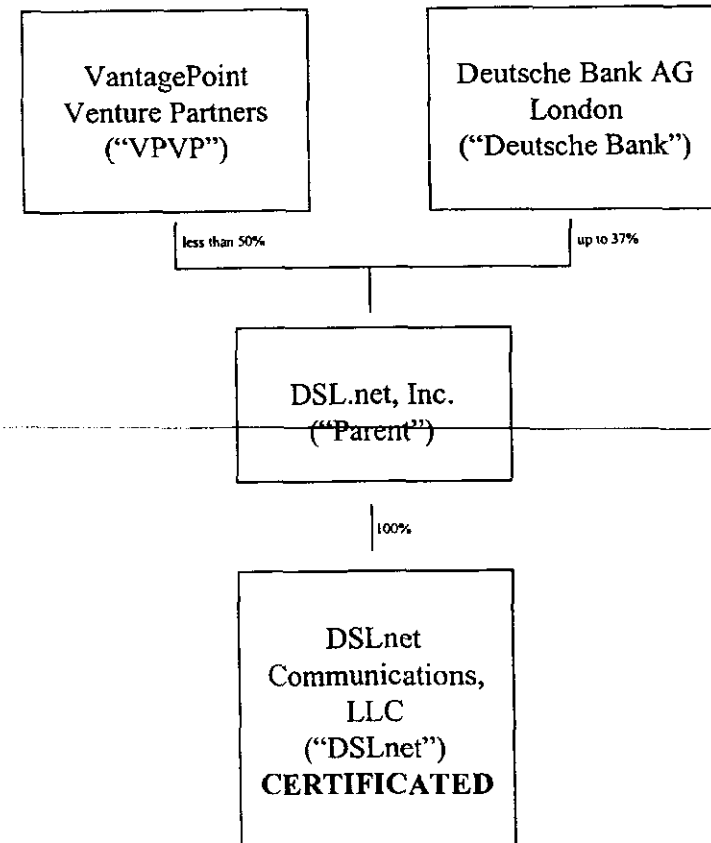
Illustrative Chart of Transaction

Illustrative Chart

Pre-Transaction

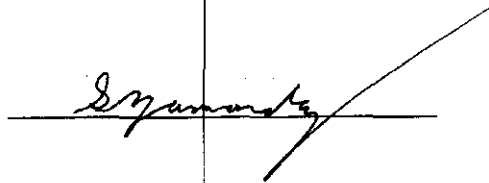


Post-Transaction



CERTIFICATION

I, Stephen Zamansky, Vice-President of DSLnet Communications, LLC, hereby certify that the information in this Application is true and accurate to the best of my knowledge and that to the best of my knowledge no party to this application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853(a), as amended.



Date: July 24, 2003